

## **II. REMARKS**

### **A. Introduction**

Applicants submit this Response in a bona fide attempt to (i) advance the prosecution of this application, (ii) answer each and every ground of objection and rejection as set forth by the Examiner, (iii) place the claims in a condition for allowance, and (iv) place the case in better condition for consideration on appeal. Applicants respectfully request reexamination and reconsideration of the above referenced patent application in view of this Response.

Claims 1, 2 and 4 - 34 are currently pending in this application. As indicated above, Claims 1, 5 and 6 have been amended. Claims 2, 4 and 16 - 34 have been canceled.

Applicants respectfully submit that the noted amendments merely make explicit that which was (and is) disclosed or implicit in the original disclosure. The amendments thus add nothing that would not be reasonably apparent to a person of ordinary skill in the art to which the invention pertains.

### **B. Response to Rejections**

#### **1. Claims 1, 2 and 4 - 15**

The Examiner has rejected Claims 1, 2 and 4 - 15 under 35 U.S.C. § 112, second paragraph, “as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.” The Examiner contends that there is insufficient antecedent basis for the phrase “said first radial of said internally pressed circular section associated therewith” in Claim 1.

As indicated above, Applicants have accordingly amended Claim 1, deleting the noted phrase. Applicants therefore respectfully request that the rejection of Claim 1, and Claims 5 - 15<sup>1</sup> under 35 U.S.C. § 112 be withdrawn.

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<sup>1</sup> As indicated above Claims 2 and 4 have been canceled.

## 2. Claims 1, 2, 4 - 9 and 15 - 22

### a. 35 U.S.C. § 102

The Examiner has rejected Claims 1, 2, 4 - 9 and 15 - 22 “under 35 U.S.C. § 102 (b) as being anticipated by U.S. Pat No. Re. 31,234 to Juriet et al.” The Examiner contends, *inter alia*:

Claim 1: Juriet et al disclose a construction member...comprising: a longitudinal body 24 having at least a base...and two upright side walls 30/30 (Fig. 10), wherein each of said upright side walls 30/30 extends longitudinally beyond said base to thereby form opposed flange portions 42 at longitudinal ends thereof, said opposed flange portions 42 including opposed and co-axially aligned, internally pressed circular sections 46b; said internally pressed circular sections 46b having a first radial center; and wherein each flange portions 42 extends beyond said base in a substantially semicircular arrangement 83 having a second radial center (Fig. 3); whereby said second radial center of said internally pressed circular section (Fig. 6) associated therewith.

As previously stated in Applicants’ September 29, 2010 Amendment (Amendment A), it is well established that a rejection for anticipation under § 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference. *See In re Paulsen*, 30 F.3d 1475, 1478-79, 31 U.S.P.Q. 2d 1671, 1673 (Fed. Cir. 1994); *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 18 U.S.P.Q. 2d 1001 (Fed. Cir.1991). *See also American Permahedge, Inc. v. Barcana, Inc.*, 857 F. Supp. 308, 32 U.S.P.Q. 2d 1801, 1807-08 (S.D. NY 1994) (“Prior art anticipates an invention ... if a single prior art reference contains each and every element of the patent at issue, operating in the same fashion to perform the identical function as the patent product. ... Thus, any degree of physical difference between the patented product and the prior art, *no matter how slight*, defeats the claim of anticipation.”); *Transco Ex parte Levy*, 17 U.S.P.Q. 2d 1461, 1462 (Bd. Pat. App. & Int’l 1990) (“[I]t is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference”).

Applicants respectfully submit that independent Claim 1, as amended, and, hence, Claims 5 - 9 and 15, dependent thereon, are *not* anticipated by Juriet, et al. As set forth in detail below, Jureit, et al. simply does not disclose or even suggest every limitation of Applicants’ claimed invention.

Without acquiescing to the Examiner's rejections, and in an effort to expedite Allowance of the subject application, Claim 1 has been amended to recite that Applicants' construction member includes:

*“at least one receival portion along its length, said at least one receival portion having said opposed and co-axially aligned, internally pressed circular sections associated with said upright side walls, said side wall internally pressed circular sections being configured to receive and rotatably engage said internally pressed sections of said opposed flange portions of a further construction member;*

*wherein said internally pressed circular sections of said opposed flange portions are correspondingly shaped with said internally pressed sections of said receival portion, such that when opposed flange portions of a first construction member engage with those of the receival portion of a second construction member, said first construction member is rotatable by way of engagement of corresponding internally pressed circular sections.”*

Applicants respectfully submit that the noted limitations are not taught or even suggested by Jureit, et al. Indeed, the Juriet, et al. joint does **not** include the claimed additional receival portion along its length.

Further, the top chord member 12 of the Juriet, et al. member is composed of two separate members (25 and 26) joined together at **joint** 25. However, the intermediate chord members 16 and 18 are **not** received by a “receival portion” along the length of the member.

Applicants therefore respectfully request that the rejection of Claims 1, 5 - 9 and 15 under 35 U.S.C. § 102 be withdrawn.

#### **b. 35 U.S.C. § 103**

Applicants further submit that Claims 1, 5 - 9 and 15 are **unobvious** in view of Jureit, et al.

It is well established that in determining what is and what is not obvious under 35 U.S.C. § 103, unexpected or **superior results, functions or properties achieved by or embodied in a claimed invention must be considered**. See *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 127 S. Ct. 1727, 167 L. Ed. 2d 705 (2007). It is also well established that all properties and advantages not in the prior art must be considered. See *In re Wright*, 848 F.2d 1216, 6 U.S.P.Q. 2d 1959, 1962 (Fed. Cir. 1988) It is thus the invention as a whole, including superior results and advantages, which must be considered in obviousness determinations.

As indicated above, Claim 1 has been amended to define a construction member having the following:

*“at least one receival portion along its length, said at least one receival portion having said opposed and co-axially aligned, internally pressed circular sections associated with said upright side walls, said side wall internally pressed circular sections being configured to receive and rotatably engage said internally pressed sections of said opposed flange portions of a further construction member.”*

As stated above, the noted limitation is not disclosed or even suggested by Juriet, et al.

Referring to Figure 6 of the application, as filed, the present invention comprises a single construction member that has the ability to be attached to another corresponding construction member. This function is facilitated by the internally pressed section present at the terminal ends of the construction member and the at least one further *receival* portion along the members length (see 124 in Figure 6). These features enable the constructions member, in conjunction with further construction members of the present invention, to form a complete roof truss, as is best shown in Figure 7.

Having the receival portion fabricated along the length of the same construction member greatly increases the structural integrity of a truss when in use, as each member in the truss is continuous, i.e. each construction member actually becomes a connection member for other members (as again shown in Figure 7). Therefore, adding a transverse construction member or chord member (i.e. 12, 14, 16, and 18 in Figure 7) does *not* decrease the structural integrity of the truss.

In complete contrast to the present invention, Juriet, et al. merely disclose a “**joint**” member that is directed to (and, hence, primarily concerned with) the connection of structural wooden members in frames and roof trusses (e.g., col. 1, ll. 9-13). It cannot be reasonably disputed that the Juriet, et al. joint does *not* include the claimed additional “receival portion along its length”. It also cannot be reasonably disputed that Juriet, et al. do not disclose or even suggest the claimed “receival portion.”

For instance, as can be seen in Figure 1 of Juriet, et al., top chord member 12 is composed of two separate members (25 and 26) joined together at **joint** 25. However, the intermediate chord members 16 and 18 are *not* received by a “receival portion” along the length of the member like that of Applicants’ claimed roof truss.

In other words, *each chord-chord connection requires a single joint member*. The joint disclosed by Juriet, et al. without the aforementioned features of the present invention would thus not be structurally sound, as each connection would define the structural strength of the chord.

Claim 1, as amended, further provides:

*“wherein said internally pressed circular sections of said opposed flange portions are correspondingly shaped with said internally pressed sections of said receival portion, such that when opposed flange portions of a first construction member engage with those of the receival portion of a second construction member, said first construction member is rotatable by way of engagement of corresponding internally pressed circular sections.”*

As discussed in detail above, Juriet, et al. also does not disclose or even suggest Applicants’ claimed receival portion.

Applicants further submit that a distinguishing feature is the fact that *“internally pressed circular sections”* of the opposed flange portions at the end of the construction member are corresponding, or in other words, can mate with pressed circular sections also provided in a receival portion of a second construction member. That is, *“such that when opposed flange portions of a first construction member engage with those of the receival portion of a second construction member said first construction member is rotatable by way of engagement of corresponding internally pressed circular sections”*.

The aforementioned feature of the present invention renders the construction member easy to use in the construction of a roof truss. In particular, the mating ability of these internally pressed sections of co-joining construction members allows for easy attachment but also the simple alignment of the connection members such that the fastener can be easily inserted to connect the same.

Applicants further submit that Larson also does not disclose or even suggest the construction member recited in amended Claim 1. Larson also fails to cure the deficiencies of Juriet, et al.

Larson is merely directed to a construction member that has a profile enabled to receive a truss or chord member, as is shown in Figures 3-5 (usually a wooden member). The attachment is imparted by fasteners passing through the walls of the construction member, as shown in Figure 1A.

More importantly, however, at no time is there a receival portion adapted to impart the attachment of another construction member of the same construction. Moreover, in no instance is there any disclosure related to internally pressed sections that have the ability to engage with the same of a like construction member.

Applicants therefore respectfully submit that Claims 1, 5 - 9 and 15 are *unobvious* in view of Jureit, et al., alone, or in combination with Larson.

### 3. Claims 23 – 26 and 29 - 33

The Examiner has also rejected Claims 23 – 26 and 29 - 33 under 35 U.S.C. § 103(a) as being unpatentable over Juriet, et al. As indicated above, Claims 23 - 26 and 29 - 33 have been cancelled.

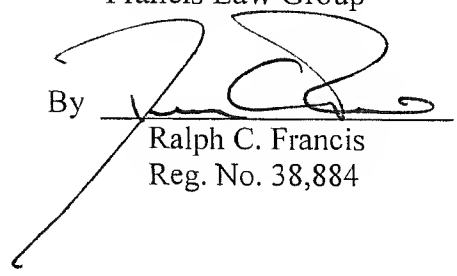
### III. CONCLUSION

Applicants having answered each and every ground of rejection, as set forth by the Examiner, and having added no new matter, respectfully submit that Claims 1, and 5 - 15 are now in condition for allowance and the same is respectfully solicited.

If the Examiner has any further questions or comments, Applicants invite the Examiner to contact their Attorney of Record at the telephone number below to expedite prosecution of the application.

Respectfully submitted,  
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